

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

01 NOV 7 PM 2 01

In Re: *Petition of MCI WorldCom to Enforce Interconnection Agreement with BellSouth*

EXECUTIVE SECRETARY

Docket No. 99-00662

BELLSOUTH TELECOMMUNICATIONS, INC.'s
MOTION TO TAKE JUDICIAL NOTICE OF PRIOR TESTIMONY

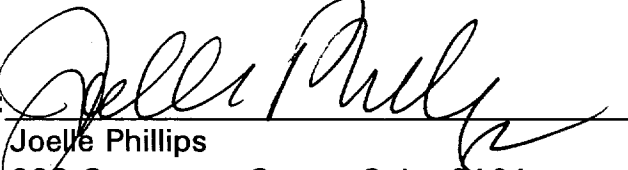
BellSouth Telecommunications, Inc. ("BellSouth") respectfully moves the Hearing Officer to take judicial notice of the excerpts from the following testimony which have been filed in previous dockets:

1. Direct Testimony of Steven R. Brenner filed on behalf of MCI Telecommunications Corporation on September 12, 1996, Docket No. 96-01152, pages 37-43 (attached as Exhibit "A").
2. Direct Examination of Sherry Lichtenberg on May 7, 2001, Docket No. 00-00309, transcript of proceedings, pages 21-27 (attached as Exhibit "B").

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By:



Joelle Phillips
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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Ave., #1600
P. O. Box 198062
Nashville, TN 39219-8062

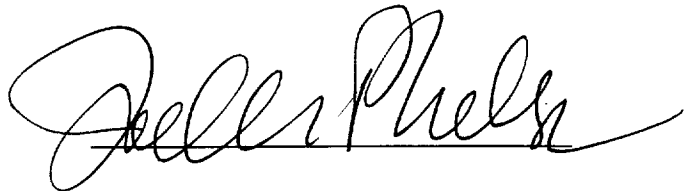
A handwritten signature in cursive script, appearing to read "J. P. Phelps", written over a horizontal line.

EXHIBIT "A"

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DIRECT TESTIMONY OF STEVEN R. BRENNER
ON BEHALF OF MCI TELECOMMUNICATIONS CORPORATION

DOCKET NO. 96-01152

September 12, 1996

1 I. PERSONAL BACKGROUND

2 Q. PLEASE STATE YOUR NAME AND ADDRESS.

3 A. My name is Steven R. Brenner. My business address is 1001 Pennsylvania
4 Avenue N.W., Suite 750 North, Washington, D.C. 20004.

5

6 Q. WHAT IS YOUR OCCUPATION AND PROFESSION?

7 A. I am a Vice President of Charles River Associates Incorporated, an economics
8 and business consulting firm based in Boston with offices in Boston, Washington,
9 D.C., and Palo Alto, California. I am an economic consultant specializing in the
10 analysis of competition policy issues and the economics of the
11 telecommunications, broadcasting, and cable industries.

12

13 Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL
14 BACKGROUND AND EXPERIENCE

15 A. I have been an economic consultant with Charles River Associates since 1988,
16 and during that time have worked on a wide range of antitrust and regulatory
17 issues involving the telecommunications and cable industries, as well as many
18 other industries outside the field of communications. While on leave from Charles

1 Q. WHAT SHOULD STATE REGULATORS USE TO SET TELRIC-BASED RATES
2 FOR COMPENSATION?

3 A. I urge that the state regulators use the Hatfield Model to establish prices in
4 conformance with TELRIC principles, under the presumption of symmetry in rates
5 (unless the entrant proves it is entitled to be paid a higher rate). As was
6 discussed in the section above on unbundled network elements, the Hatfield
7 model produces reasonable estimates of TELRIC costs, and estimates more
8 consistent with the FCC's required TELRIC methodology than cost estimates
9 derived from incumbent LEC cost studies with which I am familiar.

10
11 Q. HOW SHOULD LOCAL EXCHANGE TERMINATING TRAFFIC BE MEASURED?

12 A. I urge that only the most efficient measurement and billing procedures be used to
13 implement compensation, and that the incumbent LECs be allowed to recover in
14 any rates charged to compensate for transport and termination only the
15 forward-looking costs of the most efficient measurement and billing procedures.
16 Specifically, I urge that auditable Percent Local Usage reports be used to
17 determine the portion of traffic for which local interconnection compensation is
18 due, rather than new measurement systems married to the billing system for
19 switched access that would have to be developed and implemented at substantial
20 cost. To do otherwise would prevent consumers from gaining the benefits sought
21 from the 1996 Act.

22
23 Q. WHY DO YOU RECOMMEND THE USE OF A PERCENT LOCAL USAGE
24 FACTOR, RATHER THAN THE DEVELOPMENT OF A NEW SYSTEM FOR

1 MEASUREMENT AND BILLING OF TERMINATING LOCAL EXCHANGE
2 TRAFFIC?

3 A. Just as the incumbents have the incentive and the ability to try to prevent genuine
4 competition using unbundled network elements by imposing excessively high
5 non-recurring costs, the incumbents have the same incentives and ability to try to
6 thwart the development of effective competition by imposing excessive and
7 disproportionate costs for measurement and billing on entrants.

8 Many incumbent local exchange carriers do not now have a means to
9 determine whether terminating traffic is local or intraLATA without imposing
10 inefficiencies on the carrier delivering that traffic by requiring them to send it on
11 separate trunk groups, which forces them to lose some of the economies of scale
12 available in trunking. Developing and implementing a new system to do this will
13 be costly. While it is the case that incumbent local exchange carriers can and do
14 measure and bill for at least some of their local exchange traffic, the systems they
15 use for that purpose exist mainly in the originating switch and cannot be used to
16 determine whether a terminating call is a local or intraLATA toll call. Moreover,
17 the measurement system that does exist for measuring some terminating traffic,
18 switched access, cannot handle calls that are not preceded by a "1." Thus, any
19 arrangement for terminating local exchange traffic that would have a charge per
20 minute could force incumbents and entrants to develop new systems to sort out
21 different kinds of traffic. Costs associated with the creation of systems for
22 measuring and billing terminating local exchange calls will fall disproportionately
23 on new entrants.

24

1 Q. IS THIS JUST A THEORETICAL CONCERN?

2 A. No. The development of measurement and billing systems for switched access
3 shows that this concern is not an idle one. AT&T prior to divestiture wanted a new
4 measurement and billing system for interconnection for what were then called
5 Other Common Carriers, the first ones being MCI and Sprint, in order to be able to
6 charge them for all of the so-called non-conversation time: the time spent setting
7 up calls that occurs in addition to the time when conversations actually occur.
8 Until the advent of the Other Common Carriers, all that the switches were
9 designed to measure was conversation time, as that was all that was billed to end
10 users. AT&T knew the average non-conversation time of a call, and could have
11 factored the costs of that into rates based on conversation time, but it chose not to
12 take that approach.

13 Because switched access was to be measured and billed differently from
14 how end user calls were measured and billed, the incumbent LECs needed new
15 measurement and billing systems. The new systems turned out to be much more
16 costly than the systems used for end user measurement and billing. According to
17 data supplied in Massachusetts in 1995, it costs NYNEX only \$0.000007 per
18 message to bill a local exchange call, but \$0.000215 per minute to bill a carrier
19 access call. (Attachment 3 to the testimony of Ms. Paula Brown, in D.P.U.
20 94-185) According to Page 2 of 9 of Ms. Brown's Attachment 3, the average
21 duration of a call is 3.16 minutes. Multiplying that times her carrier access billing
22 cost shows a cost almost 100 times greater to bill a single call using the billing
23 system for carrier access than the cost to bill an end user.

24 The incumbent local exchange carriers are indeed working on developing a
25 new system to measure terminating local exchange traffic coming from other

1 carriers that uses Signaling System 7 (SS7) data. If implemented, this would have
2 several bad effects on entrants. First, it is going to add significant costs to the
3 cost of terminating local exchange traffic. I understand that, based on data
4 provided under proprietary agreements in at least two U S West states,
5 Washington and Oregon, developing such a measurement and billing system
6 could more than double the forward-looking economic cost of the end office
7 switching function for terminating traffic from the cost without measurement and
8 billing. This is a significant cost burden to add to local exchange service. Second,
9 it will penalize entrants because they will not be able to use it for all of the traffic
10 that incumbent LECs terminate to them, as not all LEC switches are yet equipped
11 to use SS7. Thus, although all of the traffic going from an entrant to an incumbent
12 could be sorted and measured in this manner, the converse would not be true.

13 Moreover, I understand that the same cost data showed that the
14 measurement function would be even more costly than the measurement function
15 now performed for switched access. U S West proposed to use the same billing
16 system it uses for interexchange carriers, with billing costs that are higher than the
17 costs to bill measured local exchange traffic. In summary, the proposal is a way to
18 increase the already inefficiently high costs of measuring and billing regular
19 switched access, and impose those costs on entrants.

20 In order to be able to participate in a measured approach to compensation,
21 the entrants would also have to incur the costs to install measurement equipment
22 in their networks. The entrants cannot opt out of this requirement because to do
23 so would put them at an even bigger disadvantage than if they installed the
24 equipment. If compensation were to be on a measured use basis and the entrants
25 did not install measurement equipment, they would not only pay the incumbent to

1 terminate their traffic, but would also pay to terminate the incumbent's traffic.
2 Thus, they would be forced to install measurement equipment themselves. As
3 noted above, however, not all traffic from incumbent LECs uses SS7 signaling.

4 Additionally, based on the experiences to date with the billing for carrier
5 access charges, the use of a bad measurement and billing system will pose
6 additional costs in the form of auditing and verification costs. Carrier access bills
7 have been sufficiently in error that it has been cost effective for interexchange
8 carriers to hire people full time to audit and try to get corrections made in these
9 bills. These auditing costs have not been one-time costs, but continue to be
10 incurred today. The costs to the interexchange carriers are less than the savings
11 from what they otherwise would have been required to pay, but these additional
12 expenditures on auditing due to the use of a bad measurement and billing system
13 bring with them no social benefits whatsoever. In other words, these additional
14 costs are a total dead weight loss to society.

15 Increases in these costs would fall disproportionately on entrants. The
16 incumbent LEC would experience at least some of the same costs for each minute
17 or message delivered to an entrant for termination, but those minutes -- while
18 most likely equal to the number received from the entrants -- would constitute a
19 much smaller percentage of the incumbent LEC's total traffic, at least for some
20 time to come. The result is that the impact is much less on the incumbent than on
21 the entrants of being faced with unnecessary and, from the point of view of
22 society, wasteful costs than it is on the entrants.
23

1 Q. IS THERE ANY EVIDENCE THAT THE INCUMBENT LECS WANT TO IMPOSE
2 DISPROPORTIONATE COSTS FOR MEASUREMENT AND BILLING ON
3 ENTRANTS?

4 A. Yes. That incumbent LECs see an opportunity to impose disproportionate costs
5 on entrants is supported by the nature of the agreement that BellSouth negotiated
6 with entrants. The BellSouth agreement requires both the incumbent and the
7 entrant to measure traffic. There are a number of fixed costs incurred for
8 measurement and billing even if measurement and billing is based on exchanging
9 Percent Local Usage information. The entrant must spread the fixed costs of
10 installation and use over a much smaller total base of operations. The result is
11 that average cost per unit of traffic is raised more for the entrant than for the
12 incumbent.

13 That the average cost per unit of traffic is raised more for the entrant than
14 for the incumbent is a feature of the interplay between the cost structure of the
15 billing system and the vastly different proportions of total traffic that is
16 interconnected for the incumbent and the entrant. It has been argued that
17 measurement costs nonetheless may be worth incurring so that, among other
18 reasons, the payments a carrier receives for terminating interconnected traffic can
19 vary with the volume of that traffic. The usual claim is that this is particularly
20 important because of the possibility that the flow of traffic between two carriers
21 might be substantially unbalanced.

22 The billing and measuring system required by the BellSouth agreement,
23 however, would not serve this function. It would not allow a carrier to receive
24 larger net payments if it terminated substantially more interconnected traffic than it
25 originated because the agreement requires that bill-and-keep take over if traffic is

1 out of balance by more than 105 percent. Thus bill-and-keep is used when traffic
2 is out of balance and explicit payment is used when traffic is roughly in balance --
3 the exact opposite of the FCC requirement for use of bill-and-keep. It is difficult to
4 make much sense of this arrangement, but it is easy to see that it does ensure
5 that entrants' costs of serving a customer will be disproportionately increased by
6 the requirement that they install measurement equipment that may not even be
7 used.

8
9 Q. WHAT SHOULD STATE REGULATORS ORDER FOR DETERMINING THE
10 AMOUNT OF LOCAL EXCHANGE TRAFFIC PASSING FROM ONE NETWORK
11 TO ANOTHER?

12 A. To avoid the imposition of disparate and inefficient administrative costs, state
13 regulators should require all carriers, incumbents and entrants alike, to report a
14 percentage local traffic amount subject to an auditing requirement as the basis for
15 compensation payments for transport and termination. This would mirror the
16 current practice for jurisdictional reporting of terminating switched access.

17 Carriers can count minutes of use coming into their switches over a trunk
18 group. Taking that count, plus the percentage of local traffic would enable the
19 receiving carrier to bill for transport and termination without having to invent a
20 whole new measurement and billing system. This would be far more efficient than
21 allowing the incumbent LECs to act on their incentives to impose unnecessary and
22 disparate cost burdens on entrants in an attempt to impede the development of
23 local exchange competition.
24

EXHIBIT "B"

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1 BEFORE THE TENNESSEE REGULATORY AUTHORITY

2 IN RE:)

3 PETITION OF MCIMETRO ACCESS)

4 TRANSMISSION SERVICES, L.L.C., AND)

5 BROOKS FIBER COMMUNICATIONS OF)
TENNESSEE, INC., FOR ARBITRATION OF)

Docket No.

6 CERTAIN TERMS AND CONDITIONS OF)

00-00309

7 PROPOSED AGREEMENT WITH BELLSOUTH)

8 TELECOMMUNICATIONS, INC., CONCERNING)

9 INTERCONNECTION AND RESALE UNDER)

10 THE TELECOMMUNICATIONS ACT OF 1996)

11

TRANSCRIPT OF PROCEEDINGS

12

Monday, May 7, 2001

13

VOLUME I

14

15

APPEARANCES:

16

For BellSouth:

Mr. Guy M. Hicks

17

Mr. T. Michael Twomey

18

For MCI WorldCom:

Ms. Susan Berlin

Mr. Dulaney L. O'Roark

19

For TRA Staff:

Mr. Gary Hotvedt

Mr. Carsie Mundy

20

21

22

23

24

25

Reported by:

Donna J. McWhorter, RPR

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1 pipeline in a test mode last night to make sure that
2 the interfaces are working. We have received the
3 handshake information back from the BellSouth systems.
4 Needless to say, I'm very excited about that. We
5 hopefully will receive either a reject or a
6 confirmation that the service is installed sometime
7 today, and then we can begin our testing and our review
8 of how it's working.

9 Q. Is that the first state, Georgia, that you
10 have gone into the residential market on a large scale
11 of the nine states in BellSouth's region?

12 A. Yes. We have been able to go into Georgia
13 because the Georgia commission gave us a very favorable
14 pricing structure that allows us to offer competitive
15 local service. We very much want to be able to do that
16 in other states, particularly here in Tennessee, so
17 that I'll get a chance to come back and enjoy this
18 place some more. But until we have the proper costing,
19 we won't be able to do that. We have begun to review
20 the requirements in terms of regulations and in terms
21 of product specificity, but until it can be offered at
22 a price that is a good business judgment, we're going
23 to have to wait.

24 Q. So is it your testimony that the prices or
25 the rates that this Authority has established for

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1 unbundled network elements are so high as to preclude
2 WorldCom from coming into the market to offer
3 competitive local service?

4 A. Mr. Twomey, one of the jobs that I don't
5 have at MCI Worldcom --

6 Q. I'll tell you what, could you start with a
7 yes or a no and then give me an explanation? I will
8 not interrupt your explanation.

9 A. Thank you. And I'm not sure how to give
10 you a yes or no since I don't deal with the pricing
11 side of the business. So my answer is yes, but let me
12 explain. We are reviewing the rates. Our financial
13 folks are concerned and need to do some additional
14 evaluation. But I do not have any specifics that I can
15 provide you today. I have promised the financial guys
16 that I will talk about operational support systems and
17 they will talk about dollars.

18 Q. Well, what are your financial folks
19 concerned about here in Tennessee?

20 CHAIRMAN KYLE: I think she just told
21 you that isn't her issue. Can we get back on her
22 issues, that you were going to take in order?

23 DIRECTOR MALONE: I'm kind of
24 interested. I mean, she opened this up by referring to
25 the costing in Georgia and the costing in the other

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1 states and that they'd like to be in Tennessee. So I
2 think the witness opened this up.

3 CHAIRMAN KYLE: Okay. Let's take it
4 this way: Anytime a colleague wants more information,
5 let's give it to him. But do you have someone who can
6 speak to what Mr. Twomey has raised, since she's not
7 the expert in that area? She can give us what
8 information she knows, which obviously is going to be
9 vague. Are you bringing up another witness that can
10 specifically speak to this?

11 MR. O'ROARK: No, Chairman Kyle, we
12 are not.

13 CHAIRMAN KYLE: Well, Mr. Malone wants
14 some information that you have on this issue.

15 MR. TWOMEY: I just want to probe the
16 extent of her knowledge. She volunteered that she
17 wasn't in all of our states because the prices weren't
18 right, and she said that her financial people had
19 concerns. I want to cross-examine her on that because
20 I think that all of the requests that MCI has made in
21 this hearing need to be put in the proper context, and
22 you are entitled to determine whether they are serious
23 about competing. I mean, that's my argument. But I
24 want to probe a little bit more, to see what she said
25 and what's the basis for what she said.

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CHAIRMAN KYLE: Okay. Well,

2 Mr. Malone may have some questions concerning this.

3

DIRECTOR MALONE: And I agree with

4 Chairman Kyle. I mean, the witness's answer has to be

5 taken. But maybe Mr. O'Roark needs to instruct his

6 witnesses, to the extent you open a line, you're

7 subject to be questioned on it. I don't expect us to

8 get shots from witnesses who are going to say, "Well,

9 other than that, I can't say anything else on that

10 subject." It would be best to say nothing on the

11 subject at all.

12

MR. O'ROARK: Yes, Director Malone.

13 And our witnesses are all in the room, and per your

14 admonition, I assume that they will all take that to

15 heart.

16

DIRECTOR MALONE: That was a pretty

17 important assertion, and to make the assertion on the

18 record, without being able to back it up, is -- I think

19 Mr. Twomey has an ability to pursue it. It appears

20 that the pursuit is going to not amount to anything,

21 but I would suggest that if witnesses aren't prepared

22 to back up their statements, that they be very careful

23 as to what they assert.

24

CHAIRMAN KYLE: You may just give any

25 information you have and see if that satisfies --

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THE WITNESS: Certainly, Chairman.

2 And, Director, I certainly thank you for your
3 admonition.

4 Let me explain how we do our financial
5 analysis, without getting into either corporate-
6 sensitive information or speaking to areas with which
7 I'm not familiar. One of the things that we have to
8 look at is the cost of the loop, the cost of the port,
9 how switching -- how the loop and the port rates -- how
10 the loop rates have been deaveraged and the relative
11 density of the population where we would sell.

12 At the same time, we look at our own
13 costs. We have a rule of thumb which basically says
14 that if I cannot take that loop and that port rate, put
15 it together, and offer a product that, even before I
16 put in my own costs, is going to be attractive to the
17 customer and is going to provide us with our internal
18 hurdle rate, threshold of financials that covers the
19 cost of doing development, that we have to question
20 whether we can enter. The easiest explanation is, if I
21 wanted to become a car maker in competition with GM and
22 I had to buy the parts and put it together and the sum
23 of the parts was more than what GM was selling, that I
24 might not be able to do that.

25

We continue to review the decisions

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1 here in the Authority and to try to work through how
2 best we can enter. We are very serious about getting
3 into the local business. We are in -- I have to count
4 them on my fingers -- as of today, six markets across
5 the country, and it's very important to us to continue
6 to move forward. We are very, very serious about this
7 business. I hope that helps to answer your question.

8 DIRECTOR GREER: I see Mr. Twomey
9 shaking his head, so I'm not sure he was going to ask
10 another question.

11 I take it, from what you're saying,
12 that MCI, at this point, thinks that the prices in
13 Tennessee do not afford you an opportunity to come in
14 and be competitive. Is that a summary of what you've
15 said?

16 THE WITNESS: That is the summary,
17 sir. We have a very big financial team that helps to
18 make those decisions.

19 DIRECTOR GREER: I'm sure BellSouth
20 would be happy to hear that, but they keep telling us
21 that we've set the prices too low. So, you know, your
22 comments are quite interesting, because as we go
23 through the price setting, they appeal every decision
24 we make because the prices are too low, and you're
25 telling me they're not low enough for you to come and

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1 compete. So, gee, we're really in a quandary here,
2 aren't we, because I want them low enough for you to
3 compete.

4 THE WITNESS: And we would very much
5 like to be here in Tennessee. As I said, it's very
6 important to us to build this as a real business. We
7 have a lot of customers now across the country, and
8 we're looking forward to having as much as we can in
9 BellSouth territory.

10 DIRECTOR GREER: But you said you're
11 competing in the residential market in nine different
12 markets?

13 THE WITNESS: In six different
14 markets as of this morning: New York, Pennsylvania,
15 Texas, Michigan, Illinois, and Georgia.

16 DIRECTOR GREER: And in Georgia, is it
17 primarily in the urban areas, such as Atlanta?

18 THE WITNESS: The largest density
19 cells: Atlanta, the Atlanta area, and I believe it's
20 also the Macon area.

21 DIRECTOR MALONE: You may not be able
22 to answer this question. Given your preliminary review
23 of the Authority's decisions, is it WorldCom's position
24 that the numbers just didn't fall right or that the
25 Authority erred, or have we taken some -- there's some